



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2017

Mr. Ricardo R. Lopez
Counsel for North East Independent School District
Schulman, Lopez, Hoffer, and Adelstein, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2017-04271

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 647795.

The North East Independent School District (the "district"), which you represent, received a request for all information pertaining to a specified incident involving the requestor's son. You state the district will release some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.116 of the Government Code provides,

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state, and provide documentation demonstrating, Exhibit C consists of audit working papers prepared or maintained in the course of an investigation authorized by specified district policies adopted by the district's school board. Based on your representations and our review, we agree the information submitted as Exhibit C constitutes audit working papers. Therefore, the district may withhold Exhibit C under section 552.116 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 of the Government Code encompasses section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). Additionally, a court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as it "reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006. no pet.). In Open Records Decision No. 643, we concluded that a "teacher" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See* ORD 643.

You argue the information submitted as Exhibit D consists of a confidential evaluation of a teacher by the district. You indicate the teacher at issue was certified as a teacher by the State Board of Educator Certification and was acting as a teacher at the time the evaluation was prepared. Upon review, we find the district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

In summary, the district may withhold Exhibit C under section 552.116 of the Government Code. The district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 647795

Enc. Submitted documents

c: Requestor
(w/o enclosures)